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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*

Summary

In the present report, the Special Rapporteur on extreme poverty and human rights presents fiscal policy, and particularly taxation policies, as a major determinant in the enjoyment of human rights. Taxation is a key tool when tackling inequality and for generating the resources necessary for poverty reduction and the realization of human rights, and can also be used to foster stronger governance, accountability and participation in public affairs. She outlines relevant human rights obligations to guide and inform State revenue-raising practices, including the duty to use the maximum available resources for the realization of economic, social and cultural rights. She also analyses the questions of how the principles of non-discrimination and equality and the duty of international cooperation and assistance should inform taxation policies at the global and national levels. After assessing how revenue-raising policies and practices can be strengthened through a human rights-based approach, she makes recommendations for fiscal and tax policies that are grounded in human rights and can lead to poverty reduction, sustainable development and the realization of transformative rights.

* Late submission.

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I. Introduction

1. Fiscal policies are a critical tool that States can employ to comply with their international human rights obligations. They can play a major role in achieving equality, tackling discrimination, and strengthening governance and accountability, as well as combating poverty and funding development.

2. Revenue and expenditure are the two main instruments of fiscal policy. In policy and in practice, they are complementary and intertwined. Both functions are critical to realizing human rights, and human right norms apply to all aspects of fiscal policy. Given that government expenditure has been subject to a considerable amount of analysis from the perspective of human rights, however, the Special Rapporteur will focus on the revenue-raising side of fiscal policy, in particular taxation. Although non-tax revenues are also important for most States, taxation is the primary source of public resource generation, besides being also the most sustainable and predictable source of financing for the provision of public goods and services.[1]

3. In the present report, submitted pursuant to Human Rights Council resolution 17/13,,the Special Rapporteur aims to put a human face on debates about tax collection, tax structures and tax abuse. Although taxation policy may seem far removed from the daily problems of the poor, it in fact plays a major role in determining and adjusting levels of inequality in a society and in funding essential services, social protection and poverty reduction measures: it is therefore central to realizing the rights and defining the opportunities of people living in poverty. Mobilizing domestic resources is also a crucial step in the financing of the Millennium Development Goals and the emerging post-2015 sustainable development agenda, as well as in complying with existing commitments to make tax systems more pro-poor.[2]

4. Human rights obligations do not prescribe precise taxation policies, given that States have the discretion to formulate the policies most appropriate to their circumstances. However, a wide range of international treaties, such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, impose limits on the discretion of States in the formulation of fiscal policies. In order to ensure that States respect, protect and fulfil rights and to assist them in opening fiscal space towards the realization of human rights, fiscal policies must be guided by the obligations imposed by these treaties.

5. A State breaches its international obligation whenever its actions or omissions are not in conformity with a specifically determined conduct required of it by that obligation;[3] for example, actions or omissions that diminish public revenues by allowing large-scale tax evasion or tax structures that have a disproportionate impact on the poorest segments of the population could constitute violations of human rights obligations, such as the obligation to allocate the maximum available resources to the enjoyment of economic, social and cultural rights or to eliminate discrimination.[4]

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[1] For example, in official development assistance, loans and borrowing, revenue from State-owned enterprises or sale of State assets, and rents, concessions and royalties from natural resource extraction.

[2] See for example the Doha Declaration on Financing for Development (General Assembly resolution 63/239, annex), para. 16.

[3] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10).

[4] Committee on Economic, Social and Cultural Rights general comment No. 20 (E/C.12/GC/20).

6. The present report focuses mainly on the obligations of States as primarily responsible for human rights obligations. Business enterprises are, however, also crucial actors in the area of fiscal policy. United Nations treaty bodies have repeatedly reiterated their view that States should take steps to prevent violations of human rights outside of their territories as a result of the activities of business enterprises that are incorporated under their laws or that have their main seat or place of business under their jurisdiction.[5] For example, States should take measures to ensure that business enterprises that the State is in a position to regulate, including legal, accounting and other specialized firms that assist in tax abuse, do not participate in or facilitate tax abuse or illicit financial flows, given that they have a detrimental impact on the realization of economic, social and cultural rights.[6]

7. Moreover, under the Guiding Principles on Business and Human Rights,[7] business enterprises also have a responsibility to respect human rights, which covers the full range of rights listed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the eight core conventions of the International Labour Organization (ILO) (principle 12). Business practices that avoid taxation may breach their responsibility to respect insofar as such actions have a negative human rights impact (principle 13) – which indeed they may – as will be further explored below. In addition, business enterprises that knowingly avoid paying tax are purposefully depriving countries of the resources they need to fulfil their human rights obligations.

8. In the present report, the Special Rapporteur explains the scope and content of human rights principles and obligations relevant to the formulation of revenue-raising policies. She elucidates the minimum requirements with which a State must comply in order to fulfil these principles and obligations. After clarifying the crucial functions of tax with regard to human rights, she examines different tax measures and practices from a human rights perspective. The Special Rapporteur concludes the report with recommendations for tax policies most beneficial for the enjoyment of human rights.

9. In order to prepare the report, the Special Rapporteur addressed a questionnaire to States and other stakeholders in which she requested information on their national fiscal policies.[8] The Special Rapporteur also convened an expert meeting, in collaboration with the Friedrich Ebert Foundation (Geneva), the Center of Concern, Christian Aid and MISEREOR, hosted by the Office of the United Nations High Commissioner for Human Rights on 16 and 17 September 2013.

10. The Special Rapporteur expresses her gratitude to all States that submitted information, and to the experts, United Nations agencies and civil society organizations that supported this process and assisted in the preparation of the report, in particular the Center of Concern, the Center for Economic and Social Rights and other members of the Righting Finance Initiative.

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[5] See CRC/C/KOR/CO/3-4, E/C.12/DEU/CO/5 and CCPR/C/DEU/CO/6.

[6] Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights Principles, principles 24 and 25.

[7] A/HRC/17/31.

[8] Questionnaire responses were received from Argentina, Azerbaijan, Bosnia and Herzegovina, Burkina Faso, Chile, Ecuador, Estonia, Finland, Germany, Greece, Iraq, Lebanon, Lithuania, the Netherlands, Paraguay, Portugal, the Republic of Moldova, Senegal, Spain, Swaziland and Ukraine. Civil society organizations also responded to a similar questionnaire. All responses are available on the webpage of the mandate holder at www.ohchr.org/EN/Issues/Poverty/Pages/Fiscalandtaxpolicy2014.aspx.

II. Normative framework

11. International human rights law sets obligations for States to respect, protect and fulfil human rights in all the ways that they exercise their functions, and the design, implementation and monitoring of revenue-raising policies is no exception. In the section below, the Special Rapporteur examines how a State's use of its revenue-raising power has a direct impact on its ability to comply with international human rights obligations, in particular relating to the economic, social and cultural rights of people living in poverty.

A. Rights to equality and to non-discrimination

12. States have an obligation to guarantee that human rights are exercised without discrimination of any kind. This is a fundamental pillar of international human rights law and an immediate obligation of all States.[9]

13. The rights to equality and to non-discrimination should be respected in all revenue-raising policies State. Thus, any action or omission by the State in this area must not discriminate, either directly or indirectly,[10] against any individual or group (including on the basis of race, gender, disability or economic and social status) or perpetuate discrimination and inequality.[11]

14. The discrimination prohibited under international human rights law includes any distinction, exclusion, restriction or preference or other differential treatment that has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of all rights.[12] Not all differences in treatment, however, constitute discrimination. A distinction is compatible with the principles of equality and non-discrimination if the differentiation is reasonable and objective, and pursues a legitimate aim under human rights instruments, and there is a reasonable relationship of proportionality between the means employed and the aim sought.[13]

15. Moreover, in some circumstances, these rights require States to take affirmative action or special measures to prevent, diminish and eliminate the conditions and attitudes that cause or perpetuate systemic or de facto discrimination.[14] These measures should not be considered discriminatory because they address structural disadvantages and encourage the equal enjoyment of human rights.

16. In revenue collection, compliance with these rights may require States to set up a progressive tax system with real redistributive capacity that preserves, and progressively increases, the income of poorer households. It also implies that affirmative action measures

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[9] See, for example, the preamble to the Charter of the United Nations and Arts. 1, para. 3, and 55; Universal Declaration of Human Rights, art. 2, para. 1; International Covenant on Economic, Social and Cultural Rights, art. 2; International Covenant on Civil and Political Rights, arts. 2 and 26; International Convention on the Elimination of All Forms of Racial Discrimination, art. 1; Convention on the Elimination of All Forms of Discrimination against Women, art. 1; and Convention on the Rights of Persons with Disabilities, art. 2.

[10] E/C.12/GC/20, para. 10.

[11] Ibid., para. 35.

[12] Ibid., para. 7, and *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40* (A/45/40), annex VI, Human Rights Committee general comment No. 18, paras. 6 and 7.

[13] E/C.12/GC/20, para. 7; Human Rights Committee general comment No. 18, para. 13.

[14] See for example Convention on the Elimination of All Forms of Discrimination against Women, art. 4, para. 1; International Convention on the Elimination of All Forms of Racial Discrimination, art. 2, para. 2; Human Rights Committee general comment No. 18, para.10; and E/C.12/GC/20, para. 39.

aimed at assisting the most disadvantaged individuals and groups that have suffered from historical or persistent discrimination, such as well-designed subsidies or tax exemptions, would not be discriminatory. In contrast, a flat tax whereby all people are required to pay an equal proportion of their income would not be conducive in achieving substantive equality, as it limits the redistributive function of taxation.

17. Revenue collection is a critical tool for States in tackling and redressing systemic discrimination and ensuring equal access to economic, social and cultural rights. In order to redress structural inequalities, including gender inequalities, States should evaluate the differential impact of existing and proposed fiscal policies on different groups, in particular those who suffer from structural discrimination. For example, certain tax arrangements that directly or indirectly disincentivize women's participation in the labour force or promote the male bread-winner family model could threaten women's enjoyment of human rights.[15] Meanwhile, a State with a very narrow tax base or that fails to tackle tax evasion may result in its inability to fund social protection or adequate and accessible public services, a situation that is likely to create or entrench inequalities.

B. Right to self-determination

18. The right to self-determination, enshrined in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, expressly encompasses the rights of peoples (not the State or Government) to freely dispose of their natural wealth and resources.[16] Considering that many natural resources are finite and non-renewable, this right needs to be protected with special care, taking into account the rights of future generations.[17] At the very least, a State's population has a right to enjoy a fair share of the financial and social benefits that natural resources can bring. This requires ensuring participation, access to information and high standards of transparency and accountability in decision-making about the use of natural resources. Where indigenous peoples are involved, States have additional and specific obligations, including ensuring free, prior and informed consent in any decisions regarding the use of their lands.[18]

19. The right to self-determination also underlines the rights of all peoples to "freely pursue their economic, social and cultural development" and the duty of States to respect that right. This has clear implications for activities that undermine the ability of other States to raise revenue and fund their own development.

C. Rights to participation, accountability, transparency and access to information

20. The rights to participation, accountability, transparency and access to information are critical human rights principles that also apply to fiscal policies and must be implemented throughout the policy cycle, from design of budgets and tax codes, allocation of expenditure, through to monitoring and evaluation of impact.

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[15] See Convention on the Elimination of All Forms of Discrimination against Women, arts. 5 and 16.

[16] See also the Declaration on the Right to Development, art. 1, para. 2.

[17] See for example A/HRC/24/44.

[18] See Declaration on the Rights of Indigenous Peoples, arts. 10 and 32, and ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

21. Many human rights treaties emphasize the right to participation.[19] In particular, article 25 of the International Covenant on Civil and Political Rights includes the right of all people to take part in the conduct of public affairs, a right that covers all aspects of public administration and the formulation and implementation of policy at international, national, regional and local levels.[20] Effective and meaningful participation is in turn dependent on the right to seek, receive and impart information.[21]

22. Decision-making processes regarding tax and public revenues must therefore be based on full transparency and the broadest possible national dialogue, with effective and meaningful participation of civil society and those who will be directly affected by such policies, including people living in poverty.[22] Fiscal policies should be subjected to the scrutiny of the population during design, implementation and evaluation stages, with the various interests transparently identified. This will require capacity-building and fostering fiscal literacy in the population. The population should have access to all relevant information in an accessible and understandable format,[23] and inclusive mechanisms should be put in place to ensure that they are actively engaged in devising the most appropriate policy options.[24] Owing to the asymmetries of power, expertise and interests in this debate, specific measures should be taken to ensure equal access and opportunities to participate, particularly for people living in poverty.[25]

23. To ensure accountability, fiscal policies, including, for example, tax incentives granted to foreign investors, should be open to judicial oversight, while public officials should be accountable for decisions that endanger the enjoyment of human rights. Accessible mechanisms for complaints and redress should also be put in place.

D. Specific obligations with regard to economic, social and cultural rights

24. Although obligations with regard to economic, social and cultural rights are primarily enshrined in the International Covenant on Economic, Social and Cultural Rights, provisions regarding such rights are also included in the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

25. States must devote the "maximum available resources" to ensure the progressive realization of all economic, social and cultural rights as expeditiously and effectively as possible,[26] even during times of severe resource constraints, whether caused by a process of adjustment, economic recession or other factors.[27] This principle should guide the State's decisions and priorities in generating, mobilizing and allocating resources in order to permit the realization of human rights. The obligation of progressive realization independent of

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[19] See A/HRC/23/36.

[20] See Human Rights Committee general comment No. 25 (CCPR/C/21/Rev.1/Add.7).

[21] Universal Declaration of Human Rights, art. 19; International Covenant on Civil and Political Rights, art. 19.

[22] See A/HRC/17/34/Add.2, paras. 36-38.

[23] Human Rights Committee general comment No. 34 (CCPR/C/GC/34), para. 19.

[24] A/HRC/23/36.

[25] Idem.

[26] International Covenant on Economic, Social and Cultural Rights,art. 2, para. 1. See also the Convention on the Rights of the Child, art. 4, and the Convention on the Rights of Persons with Disabilities, art. 4, para. 2.

[27] *Official Records of the Economic and Social Council, 1991, Supplement No. 3* (E/1991/23), annex III, Committee on Economic, Social and Cultural Rights, general comment No. 3.

economic growth also exists; it requires the effective use of available resources,[28] including potential resources that could be raised through reasonable efforts, such as taxation measures and international assistance and cooperation.[29] Other areas are also critical for mobilizing resources, including debt and deficit financing, monetary policy and financial regulation.[30]

26. Although most provisions in the International Covenant on Economic, Social and Cultural Rights are considered subject to progressive realization, States that claim resource constraints have the burden of proof to show that every effort has been made to move towards the full enjoyment of economic, social and cultural rights as a matter of priority, and that they are truly unable rather than unwilling to meet these obligations.[31] This includes an obligation to "actively seek assistance" through international cooperation.[32]

27. Moreover, States parties to the International Covenant on Economic, Social and Cultural Rights have an immediate core obligation to ensure the satisfaction of, at the very least, minimum essential levels of all economic, social and cultural rights.[33] These minimum essential levels are entitlements that are crucial to securing an adequate standard of living through basic subsistence, essential primary health care, basic shelter and housing and basic forms of education for all members of society.[34] Even during times of severe resource constraints, States must demonstrate that every effort has been made to use all resources that are at its disposal, including resources that could potentially be collected through taxation, or tackling tax evasion and other illicit financial flows, in an effort to satisfy, as a matter of priority, minimum essential levels.[35]

28. The obligation to progressively realize economic, social and cultural rights entails a prohibition of deliberate retrogression, namely, of measures that directly or indirectly lead to backwards steps in the enjoyment of rights. There is a strong presumption that such measures are in violation of human rights standards. States may only adopt such retrogressive measures if they can demonstrate that they have carefully considered all alternatives, including revenue-raising ones, and that they are duly justified by reference to the totality of the rights in the International Covenant on Economic, Social and Cultural Rights, in the context of the full use of the maximum available resources.[36] The

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[28] Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, art. 23.

[29] International Covenant on Economic, Social and Cultural Rights, art. 2, para. 1.

[30] Excessive debt servicing payments may, however, also undermine the ability of debtor countries to realize rights. See Radhika Balakrishnan, Diane Elson, James Heintz and Nicholas Lusiani, *Maximum Available Resources & Human Rights: Analytical Report*, Center for Women's Global Leadership, June 2011. See also the reports of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic social and cultural rights.

[31] See for example Committee on Economic, Social and Cultural Rights general comment No. 14 (E/C.12/2000/4), para. 47.

[32] See the Guiding Principles on Poverty and Human Rights, para. 94; A/45/40, annex VI, para. 10; *Official Records of the Economic and Social Council, 1995, Supplement No. 3* (E/1995/22), annex IV, Committee on Economic, Social and Cultural Rights general comment No. 5, para. 13; and E/C.12/1999/4, general comment No. 11, para. 11.

[33] E/1991/23, annex III, para. 10.

[34] Ibid.

[35] E/C.12/2007/1, paras.4-6. See also Committee on Economic, Social and Cultural Rights general comments No. 3 (E/1991/23, annex III), para. 12, No. 12 (E/C.12/1999/5), para. 28, and No. 14 (E/C.12/2000/4), para. 18.

[36] Committee on Economic, Social and Cultural Rights general comment No. 3 (E/1991/23, annex III) para. 9. See also general comments No. 13 (E/C.12/1999/10), para. 45, No. 14 (E/C.12/2000/4), para.

compatibility of, for example, austerity measures (such as those that many States implemented in the wake of the 2008/09 financial crisis) with the Covenant would therefore depend partly on whether the State has sought revenue-raising alternatives before making cuts in areas that are important for ensuring the enjoyment of economic, social and cultural rights, such as cuts in public sector employment, public services or social protection.

E. Obligations of international assistance and cooperation

29. States have a duty to provide international assistance and cooperation commensurate with their capacities, resources and influence, as established in Articles 55 and 56 of the Charter of the United Nations and in several international human rights treaties. Particularly important are the obligations of international assistance and cooperation enshrined in the International Covenant on Economic, Social and Cultural Rights (arts. 2, para. 1 and 1, para. 1), the Convention on the Rights of the Child (art. 4) and the Convention on the Rights of Persons with Disabilities (art. 32), on the basis of the recognition that some countries will not be able to achieve the full realization of economic, social and cultural rights if other countries in a position to assist do not do so.

30. As part of international cooperation and assistance, States have an obligation to respect and protect the enjoyment of human rights everywhere, which involves avoiding conduct that would foreseeably risk impairing the enjoyment of human rights by persons beyond their borders, and conducting assessments of the extraterritorial impact of laws, policies and practices.[37]

31. States must refrain from any conduct that impairs the ability of another State to comply with its own human rights commitments.[38] Furthermore, they have an obligation to create an international enabling environment for the fulfilment of economic, social and cultural rights, including in matters relating to taxation. They should also coordinate with each other in order to cooperate effectively in the universal fulfilment of economic, social and cultural rights.[39]

32. In this sense, providing an avenue for high-net-worth individuals and transnational corporations to evade tax liabilities (such as through the establishment of tax havens) could be contrary to obligations of international assistance and cooperation, because it can directly undermine the ability of another State to mobilize the maximum available resources for the progressive realization of economic, social and cultural rights. This could then obstruct the residents of that State from enjoying, for example, their rights to health, education or social security.

33. When acting as a member of an international organization, a State remains responsible for its own conduct in relation to its human rights obligations within and outside its territory. This includes identifying the possible human rights impact of measures agreed at the international level, including the impact on persons living in poverty.[40] Therefore, when a State makes decisions about loans as a member of an international financial institution, careful consideration of human rights obligations would mitigate against imposing conditions regarding fiscal policies that may jeopardize the human rights of the borrower

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32, No. 15 (E/C.12/2002/11), para. 19, No. 17 (E/C.12/GC/17), para. 27, No. 18 (E/C.12/GC/18), para. 34, No. 19 (E/C.12/GC/19), para. 42 and No. 21 (E/C.12/GC/21), para. 65.

[37] Guiding principles on extreme poverty and human rights (A/HRC/21/39), para. 92.

[38] See Maastricht Principles (see footnote 6), art. 21.

[39] A/HRC/21/39, para. 61. See also Maastricht Principles, principle 29.

[40] A/HRC/21/39, para. 97.

State's population or undermine that State's ability to use maximum available resources to realize economic, social and cultural rights.

34. In the past, it has been difficult to reach international agreement on tax cooperation owing to the powerful entrenched interests at play and the reluctance of States to cede any sovereignty on tax affairs. In the current status quo, however, certain States – in particular low-income States and States with high debt levels or loans from international financial institutions – have very limited sovereignty over their tax affairs. Indeed, their actions in this sphere are frequently constrained by wealthy countries, international financial institutions and business interests. Tax sovereignty is also undermined by competition for foreign investment between developing countries, creating a "race to the bottom" in terms of both corporate tax rates and incentives.

35. A contemporary interpretation of existing obligations of international cooperation and assistance should recast or redefine the outdated emphasis on tax sovereignty to a more modern conception of international tax cooperation in a globalized and interdependent world economy (see paras. ... below).[41]

III. Tax: a critical tool for realizing human rights and tackling inequality

36. Taxation is critical to finance development and can be a powerful tool for stimulating poverty reduction. Higher and more stable revenues result in increased sustainable investment in public services, infrastructure and other development needs, and improve competitiveness of economies over the long term. Taxes are not the only source of government revenue, but they are arguably the most important, because they combine three critical functions, addressed below: (a) the generation of revenue for the realization of rights; (b) achieving equality and tackling discrimination; and (c) strengthening governance and accountability.

37. Certainly, poverty reduction is more effective and sustainable when combined with investments in areas such as education, health and food security. These areas are also critical for ensuring the realization of rights in the present and future and for overcoming the intergenerational transmission of poverty.

38. Taxation policies also have the potential to reduce income and wealth inequalities, depending on their level and progressiveness.[42] This is a crucial goal, because inequalities have been shown to slow the pace of poverty reduction, create intergenerational poverty traps through uneven access to health and education, and increase the vulnerability of societies to economic crises.[43] Some research has shown that improvement in income

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[41] See for example the advisory opinion of 21 June 1971 on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)*, ICJ Reports 1971, p. 16, para. 31.

[42] Every year from 1985 to 2005, direct income taxes and transfers reduced the average Gini coefficient of income inequality in 25 countries of the Organization for Economic Cooperation and Development by about one third. See Francesca Bastagli, David Coady and Sanjeev Gupta, *Income Inequality and Fiscal Policy*, IMF Staff Discussion Note, 28 June 2012, p.11. See also ECLAC, *Time for equality: closing gaps, opening trails*, 2010, p. 225.

[43] See Department of Economic and Social Affairs, *Inequality Matters: Report on the World Social Situation 2013*, pp. 66-68, and Fiscal Policy and Income Inequality, IMF Policy Paper, 23 January 2014.

distribution is the key channel for poverty reduction.[44] In most economies, the redistribution achieved through income taxes is even higher than for means-tested social transfers.[45]

39. Moreover, when revenue is used to finance public services, it creates conditions propitious to growth and employment in formal sectors of the economy, guaranteeing both equality of access and equality of opportunities.[46] Public services also mitigate the impact of skewed income distribution and directly contribute to reducing inequality.[47]

40. Promoting economic growth is also a primary and legitimate concern of State fiscal policies. Progressive taxation can, however, help Governments to achieve more sustainable growth and to distribute the fruits of prosperity more fairly. Indeed, a recent study by the International Monetary Fund (IMF) found that the combined direct and indirect effects of redistribution, including the growth effects of the resulting lower inequality, are on average pro-growth.[48] Many developing countries have experienced significant economic growth in recent decades, although without a proportionate reduction in poverty or inequality, indicating that the benefits of growth have been concentrated in the hands of a few. This is in large part because the proceeds of growth have not been adequately taxed and redistributed, leading to a concentration of wealth that has considerable negative implications for human rights, social cohesion and future economic growth prospects.[49]

41. The Special Rapporteur explores three key areas in which government revenue-raising policies or practices can facilitate the enjoyment of human rights below.

A. Generating revenue for the realization of rights

42. The most straightforward way in which government revenues can facilitate compliance with human rights obligations is by providing resources for public goods, such as education and health services – goods that are critical to realizing human rights and that ultimately benefit the whole of society.

43. The quality, accessibility and availability of goods and services needed for the realization of human rights, such as the rights to an adequate standard of living, health, education and social security, will hinge on the resources that the State is able to collect. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), strengthening tax systems is vital to guarantee the right to education. Many of the countries furthest from achieving the widespread enjoyment of the right to education do not, however, tap their tax bases sufficiently.[50]

44. Low levels of revenue collection have a disproportionate impact on the poorest segments of the population and constitute a major obstacle to the capacity of the State to finance public services and social programmes. A lack of access to quality services is a constituent element of poverty, and people living in poverty are particularly dependent on public services, being unable to pay for private alternatives. In addition, their specific needs

[44] Abbas Grammy and Djeto Assane, "The Poverty-Growth-Inequality Triangle Hypothesis: an Empirical Examination", *Journal of Policy Modelling*, 16 November 2006.

[45] IMF, Fiscal Policy and Income Inequality (see footnote 43), p. 16.

[46] ECLAC, *Time for Equality* (see footnote 42) p. 225.

[47] Oxfam International, Working for the Many: Public services fight inequality, 3 April 2014.

[48] Jonathan D. Ostry, Andrew Berg and Charalambos G. Tsangarides, "Redistribution, Inequality and Growth", IMF Staff Discussion Note, February 2014.

[49] Tax Justice Network Africa and Christian Aid, "Africa rising? Inequalities and the essential role of fair taxation", February 2014.

[50] UNESCO, 2013/4 Education for All Global Monitoring Report, – "Teaching and learning: achieving quality for all", p. 116.

and characteristics make it more likely they will have to interact with State-funded institutions and services on a regular basis. This is particularly the case for people who experience multiple forms of discrimination and disadvantage; for example, persons with disabilities are more likely to come into regular contact with health and social services, while women are more likely to be directly dependent on social protection and health systems for at least some period of their lives because of their sexual and reproductive health and maternity-related needs. Women also serve as unpaid alternative care providers when public services are not adequately funded, increasing their time burden and limiting their opportunities to engage in paid work, education, training or leisure, while also negatively affecting their enjoyment of rights such as health, education, participation and social security.[51]

B. Achieving equality and tackling discrimination

45. Transferring and redistributing wealth through taxation has the potential to redress systemic discrimination (based on, inter alia, gender, race, age, sexual orientation, disability, socioeconomic status) and to spur progress towards substantive equality.[52] These are fundamental human rights goals and are conducive to sustainable poverty reduction. Tax structures must, however, be carefully designed if a more equitable distribution of incomes is to be achieved.

46. Progressive tax systems, in particular direct taxes, are one of the most important tools available to Governments in addressing income inequality.[53] Personal income tax is one of the most progressive and important kinds of tax in this regard. Indirect taxes, such as those based on consumption (such as value-added or sales taxes) are typically regressive, because they generally constitute a larger proportion of the income of people living in poverty;[54] for example, in Latin America, on average for the poorest 20 per cent of the population, sales tax accounts for 13.7 per cent of their income, while only 5.8 per cent of income for the richest 20 per cent.[55] Thus, despite exemptions aimed at decreasing the burden on lower-income groups, the poor bear a tax burden 2.4 times higher than that of the wealthiest people.[56] Women, who tend to use larger portions of their income on basic goods because of gender norms that assign them responsibility for the care of dependents, bear the regressive brunt of consumption taxes.[57]

47. Overall, high tax rates for goods and services and low rates for income, wealth and property bring about inequitable and discriminatory outcomes; indeed, it has been shown that the negative effect of indirect taxes on the income of people living in or on the verge of poverty can be greater than the positive effect of cash transfers.[58] Such regressive tax structures also restrict the redistributive aspect of social programmes, resulting in them

[51] See A/68/293.

[52] Ignacio Saiz, "Resourcing Rights: Combating Tax Injustice from a Human Rights Perspective", in Aoife Nolan, Rory O'Connell and Colin Harvey (eds.), *Human Rights and Public Finance* (Oxford, Hart Publishing, 2013).

[53] See IMF, *Fiscal Policy and Income Inequality* (see footnote 43), and Tax Justice Network Africa Africa and Christian Aid, *Africa Rising?* (see footnote 49).

[54] See Isabel Ortiz and Matthew Cummins, "A Recovery for All", UNICEF, 2012, p. 210.

[55] Inter-American Development Bank, *Recaudar No Basta: Los impuestos como instrumento de desarrollo*, 2013, p. 247.

[56] Ibid.

[57] UNDP, Gender Equality and Poverty Reduction: Taxation, Issues Brief, No. 1, April 2010.

[58] Nora Lustig, "Taxes, Transfers and Income Redistribution in Latin America", World Bank, *Inequality in Focus*, vol. 1, No. 2, 2012.

effectively being funded by the very persons whom they seek to benefit.[59] Thus, although each country's situation is different, the higher the prevalence of regressive taxes in the mix of revenue-raising sources, the more likely it is that a State will run afoul of the principles of equality and non-discrimination and that the minimum essential enjoyment of rights by the poorest will be threatened.

48. A well-placed tax threshold (namely, the income below which an individual or household is exempted from income tax) is also crucial for ensuring that the taxation system does not jeopardize the ability of people living in poverty to enjoy minimum essential levels of economic, social and cultural rights. Unfortunately, in some countries, households are required to pay tax before they earn enough to even meet minimum food basket requirements.[60]

49. Tax structures also affect other types of inequality; for instance, tax structures frequently discriminate against women directly or indirectly, for example by assuming women's income to be supplemental to their household.[61] This actively disincentivizes wage-earning and therefore could reduce participation in the labour market by women, potentially threatening their right to work. Policymakers should be aware of the extent to which tax policies, such as the treatment of income derived from jointly-owned assets of married couples, strengthen or break down gender inequalities, or discriminate against different types of households.[62]

50. Each national and economic context is different; the optimum form and scale of redistribution is therefore different for each country. States do have, however, an obligation to address proactively inequality in the enjoyment of rights. Redistribution through tax systems is clearly a powerful tool for them to do so.

C. Strengthening governance and accountability

51. Historically, the formation of accountable and effective States has been closely tied to the emergence of taxation systems.[63] Fiscal policies can spur State-building and foster citizenship,[64] affect the level and quality of people's participation in public affairs and strengthen the accountability and capacity of the State.[65] Conversely, tax abuse and unfair tax practices erode confidence in government, while States that do not have to rely on tax contributions (but rather on, for example, revenues from natural resources) tend to exhibit lower levels of accountability and participation in public affairs.[66]

52. In the same vein, the more a State can rely on domestic rather than external resource mobilization for its financing, the more it will be able to deploy sustainable development strategies and policies that are responsive to the needs of its people and accountable to them. Therefore, a sustainable base of domestic revenue becomes an enabling factor to

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[59] A/HRC/13/33/Add.6, para. 36.

[60] Tax Justice Network Africa and Christian Aid, "Africa Rising?" (see footnote 49), p. 7.

[61] See Diane Elson, Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW, UNIFEM, May 2006, pp. 69-103; Caren Grown and Imraan Valodia, *Taxation and Gender Equity*, 2010.

[62] UNDP, Gender Equality and Poverty Reduction: Taxation (see footnote 57).

[63] Mick Moore, "How Does Taxation Affect the Quality of Governance?", IDS Working Paper, 2007.

[64] European Commission, Tax and Development, COM(2010)163 final, 2010, p. 3.

[65] See OECD, *Governance, Taxation and Accountability: Issues and Practices*, 2008, p.13.

[66] African Development Bank, OECD et al, African Economic Outlook 2012, p. 56; Ernesto Crivelli and Sanjeev Gupta, "Resource Blessing, Revenue Curse? Domestic Revenue Effort in Resource Rich Countries", IMF Working Paper, 2014.

exercise the right to self-determination and the right of all persons to take part in the conduct of public affairs.[67] In this regard, it will also be crucial to build public confidence that these resources are being well used by, for example, increasing public participation and oversight of budgeting and expenditure.

53. Income distribution and its management through taxation also have a crucial relationship with democracy. Growing income disparities can serve to polarize and fragment societies, which can ultimately lead to alienation and social unrest.[68]

VI. Strengthening revenue raising through a human rights-based approach

54. In order to realize the potential of taxation to fulfil the above-described functions to the greatest possible extent, there are several actions that States should take. These measures are examined from the human rights perspective below.

A. Widening the tax base and improving efficiency

55. In some States, despite significant efforts to increase revenue through taxation, the amount actually collected is demonstrably inadequate to realize human rights. In Latin America and the Caribbean, for example, most States have tax ratios that are clearly lower than they should be when their level of development is considered.[69] It is however crucial that taxes be raised and collected in human rights-compliant ways, where those who can least afford it are not asked to pay more (see paras. 45 – 50 above).

56. Evidence shows that, even in developing countries, widening tax bases and improving tax collection efficiency could raise considerable additional revenue.[70] For instance, if all developing countries were able to raise 15 per cent of their national income in tax, a commonly accepted minimum figure (the OECD average is 37 per cent), they could realize at least an additional $198 billion per year, more than all foreign development assistance combined.[71]

57. Tax collection efficiency can also be increased by improvements in tax administration. Tax administrations with appropriate financial, personal and technical resources are critical to increase levels of revenue collection and to avoid abuse. Lack of investment in tax authorities is therefore a short-term false economy, with negative implications for the enjoyment of human rights. It is also crucial that tax authorities be perceived as being independent, fair, transparent and accountable.

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[67] International Covenant on Civil and Political Rights, art. 25. See also A/HRC/23/36.

[68] Department of Economic and Social Affairs, *Inequality Matters* (see footnote 43), p. 22; IMF, Fiscal Policy and Income Inequality (see footnote 43), p. 4.

[69] The average tax ratio in Latin America is 18 per cent of GDP. ECLAC, *Time for Equality* (see footnote 42), p. 228.

[70] See IMF, Revenue Mobilization in Developing Countries, 8 March 2011, p. 17; UNDP, *What will it take to achieve the Millennium Development Goals? An International Assessment*, June 2010, p. 26.

[71] ActionAid, *Accounting for Poverty: How international tax rules keep people poor*, 2009, p. 5.

B. Tackling tax abuse

58. Tax abuse includes tax evasion, fraud and other illegal practices, including the tax losses resulting from other illicit financial flows, such as bribery, corruption and money laundering.[72] Levels of tax evasion are extremely high in many countries;[73] globally, approximately $3 trillion of government revenue is lost to tax evasion every year.[74] While high-income countries are the biggest losers in absolute terms, low- and middle-income countries are particularly affected by the losses, and also face particular constraints when tackling tax abuse.[75] In 2011, developing countries lost $946.7 billion owing to illicit financial flows (a substantial portion of which relates to tax abuse),[76] according to OECD more than seven times official development assistance for that year, and substantially more than the estimated costs of achieving the Millennium Development Goals.[77]

59. Tax abuse is thus not a victimless practice; it limits resources that could be spent on reducing poverty and realizing human rights, and perpetuates vast income inequality. While the rich benefit from this practice, the poor feel the negative impact on their standard of living, their unequal political power and the inferior quality of health and education services for themselves and their children. Simulations suggest that, if all the capital flight from Africa over the period 2000-2008 had been invested in Africa, with the same productivity as actual investment, the average rate of poverty reduction would have been 4 to 6 percentage points higher per year.[78] Meanwhile, the recent devastating austerity measures taken in some countries could have been avoided entirely if some of the annual revenue lost from tax evasion had been recovered.[79]

60. A State that does not take strong measures to tackle tax abuse cannot be said to be devoting the maximum available resources to the realization of economic, social and cultural rights. Moreover, high levels of tax abuse undermine the principles of equality and non-discrimination, given that evaders end up paying less than taxpayers with the same – or less – capacity to pay. High net-worth individuals and large corporations also have a far greater ability to evade taxes as they are able to pay tax advisers, lawyers and accountants (who may sometimes provide inappropriate advice and assistance) and to open undeclared foreign bank accounts in low-tax jurisdictions. Tax abuse by corporations and high net-worth individuals forces Governments to raise revenue from other sources: often regressive taxes, the burden of which falls hardest on the poor. Therefore, if States do not tackle tax abuse, they are likely to be disproportionately benefiting wealthy individuals to the detriment of the most disadvantaged. Monitoring, preventing and punishing abuse is therefore essential in order to comply with human rights principles and improve the distributive effects of tax systems.

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[72] Human Rights Institute Task Force on Illicit Financial Flows, Poverty and Human Rights, International Bar Association, *Tax Abuses, Poverty and Human Rights*, October 2013.

[73] According to the Inter-American Development Bank (*More Than Revenue*, 2013, p. 22), evasion rates of personal and corporate income taxes average about 50 per cent in 10 Latin American countries.

[74] "The Cost of Tax Abuse", Briefing paper on the cost of tax evasion worldwide, Tax Justice Network, November 2011.

[75] Ibid.

[76] See Dev Kar and Brian LeBlanc, *Illicit Financial Flows from Developing Countries: 2002-2011*, Global Financial Integrity, 2013.

[77] See Shantayanan Devarajan, Margaret J. Miller and Eric V. Swanson, "Development Goals: History, Prospects and Costs", World Bank Policy Research working paper summary.

[78] Tax Justice Network Africa and Christian Aid, *Africa Rising?* (see footnote 49), p. 28.

[79] See Ortiz and Cummins, *The Age of Austerity*, Initiative for Policy Dialogue and the South Centre, working paper, 2013 p. 29; Center for Economic and Social Rights, Spain factsheet, 2012, p. 7.

61. It is important to note, however, that tax evasion is not possible in a domestic vacuum. Individual countries, in particular low-income countries, are severely constrained in the measures that they alone can take against tax abuse. Illicit financial flows are international in nature and therefore beyond the capacity of one State alone to tackle. The availability of offshore financial centres (tax havens) that offer low or no taxes and secrecy is a major factor. More than $21 trillion in private assets are reportedly held in tax havens to evade and avoid taxes.[80] Tax havens enable large-scale tax abuse (as well as illicit activities, such as corruption) and deprive other countries of the revenue they need to fulfil their obligations. In addition, given that most tax havens are located in – or under the jurisdiction of – wealthy countries, the global flow of money to these centres exacerbates global inequalities.[81]

62. The actions of States to facilitate and/or actively promote tax abuse and other illicit financial flows through their tax secrecy laws and policies could jeopardize their compliance with international human rights obligations, particularly with regard to international cooperation and economic, social and cultural rights.[82] States should therefore take concerted and coordinated measures against tax evasion globally as part of their domestic and extraterritorial human rights obligations and their duty to protect people from human rights violations by third parties, including business enterprises (see paras. 1 – 35 above).

C. Reassessing corporate taxation contributions

63. In many countries, business enterprises are taxed at a very low rate, even if they make large profits, owing in large part to the infrastructure, healthy educated workforce and other resources that public funds enable. In addition, many large transnational corporations are able to effectively avoid tax in many jurisdictions, including in countries where they make large profits.

64. States increasingly grant tax incentives (or tax holidays) to corporations[83] as they compete to attract foreign investment.[84] Many least developed countries, for example, offer extremely favourable tax deals to foreign investors in agriculture and mining owing to the perceived competition between countries for this investment.[85] These incentives warrant a heightened level of scrutiny in human rights terms, because they restrict the State's revenue and therefore the resources it is able to devote to rights realization. According to some estimates, revenue losses to developing countries can reach $138 billion per year.[86]

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[80] James S. Henry, The Price of Offshore Revisited, Tax Justice Network, July 2012.

[81] See United States Government Accountability Office, International Taxation: Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions, December 2008, pp. 12-13.

[82] A/HRC/25/52, para. 42.

[83] Accord to IMF(Michael Keen and Mario Mansour, Revenue Mobilization in Sub-Saharan Africa: Challenges from Globalization, IMF Working Paper, 2009, p. 19), in sub-Saharan Africa between 1980 and 2005, the proportion of countries providing incentives rose from 45 to 69 per cent. Effective corporate tax rates have dropped close to or even below zero in many developing countries (S. M. Ali Abbas and Alexander Klemm, A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies, IMF Working Paper, 2012, p. 9).

[84] Supporting the Development of More Effective Taxation Systems: a report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank, 2011.

[85] UNCTAD, Least Developed Countries Report 2013, p. 136.

[86] ActionAid, *Give us a break: How big companies are getting tax-free deals*, June 2013.

Estimates in many African countries show that revenue losses from tax incentives were between 2 and 8 per cent of GDP.[87]

65. The evidence that incentives succeed in attracting investment is actually weak.[88] It is likely that, in many cases, the investment would have come even without the incentive, and that the costs of the incentive may indeed outweigh the benefit of the investment.[89] Moreover, the granting of incentives has global ramifications, as it creates a "race to the bottom". There are also significant implications for the right to information, transparency and accountability, as tax incentives are often negotiated in secret between the Government and the company concerned, fostering corruption and weak governance.

66. Incentives sometimes take the form of a "tax stability" "or "advance pricing" agreement, signed with foreign investors to insulate them from future changes in the domestic tax rates for an extended period of time. These types of agreement should also be examined with caution under human rights law, because they reduce public resources regardless of the evolving impact on human rights.[90]

67. As in any case where a State is alleged to be failing to use its maximum available resources to fulfil obligations to progressively realize economic, social and cultural rights, incentives would have to be justified by a clear description of deliberate, concrete and targeted advances towards the fulfilment of human rights that can be expected from their implementation.[91] States parties to the International Covenant on Economic, Social and Cultural Rights would also have the burden of proving periodically that the granting of corporate tax breaks was the least restrictive policy option from the perspective of economic, social and cultural rights.[92]

D. Broadening the contributions of the financial sector

68. The huge growth of the financial sector in recent decades and the bailout in the wake of the 2008-2009 crisis raise significant human rights concerns. It is clear that at least some of the profitability growth was precisely due to the risk-taking and leveraging that ultimately proved excessive, resulting in a huge rescue from public funds that could have been used for poverty reduction and the realization of human rights. The sector's excess returns were thus made, at least partially, at the expense of the public, while its tax rates were kept low. The owners, managers and/or creditors of financial institutions were able to enjoy the full gains of good times, whereas ordinary taxpayers were expected to shoulder the costs to save the sector as it was collapsing, while also having to endure austerity measures.[93] Insufficiently regulated financial sectors have also played a role in enabling the aggressive

[87] Tax Justice Network Africa and Christian Aid, *Africa Rising?* (see footnote 49), p. 43.

[88] See ibid. IMF, OECD et al, Supporting the Development (see footnote 84), pp. 19-20; McKinsey Global Institute, *New Horizons: Multinational Company Investment in Developing Economies*, October 2003, p. 2; and ActionAid, *Give us a break* (see footnote 86).

[89] Louis T. Wells Jr., Nancy J. Allen, Jacques Morisset and Neda Pirnia, "Using Tax Incentives to Compete for Foreign Investment: Are they Worth the Costs?", Occasional Paper 15, Foreign Investment Advisory Service, 2001.

[90] The Guiding Principles on Business and Human Rights clearly require States to "maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with business enterprises, for instance through investment treaties or contracts" (principle 9).

[91] See E/C.12/2007/1, para.8 (a).

[92] Ibid., paras. 8 (d) and (e).

[93] See IMF, *A Fair and Substantial Contribution by the Financial Sector*, Final Report for the G-20, June 2010, p. 9,

avoidance or evasion of taxation by other actors, for instance through structured finance instruments,[94] transfer pricing or profit shifting (see paras. 74 – 78 below).

69. Low tax demands of the financial sector and lack of regulation may therefore be indicative of a State's unwillingness (rather than inability) to use its maximum available resources. Increasing taxation of the financial sector could play a role in redressing this balance and discourage the excessive risk-taking that led to the crisis.[95] Taxes on certain types of financial transactions have been introduced in various jurisdictions (including in India, Peru, South Korea and Sweden) as a way to raise revenue from the financial sector as well as to deter speculative trading activities that generate risks for the whole of society (in the form of crises or fluctuations in food/fuel prices). This measure could also enable States to better comply with several human rights obligations, in particular those regarding economic, social and cultural rights.[96]

E. Ensuring sustainable use of natural resources while respecting rights

70. Natural resources can be a vital source of revenue that the State can use to comply with its human rights obligations. The financial and social benefits of natural resource exploitation are, however, increasingly bypassing people in producing countries. In most countries, extractive industries generate few jobs directly and have only weak links to local markets.[97] Far from bringing benefits, the exploitation of natural resources has been frequently linked to human rights abuse and encroachment on lands and livelihoods of communities, mass evictions, pollution and environmental degradation, which may result in violations of rights to health, food, housing and water.[98] The right of people to participate in decisions regarding natural resources is often violated, especially where the land, territory and resources of indigenous peoples is concerned.

71. In addition, the rightful benefits in terms of revenue often go abroad (sometimes to tax havens),[99] aided by the fact that extractive industries are often not required to disclose their profits on a project-by-project basis. The public revenue generated through taxes on the sector remains well below potential;[100] the revenue secured by many resource-rich countries is very low in relation to the value of exports.[101]

72. A State allowing or directly undertaking exploitation of natural resources without ensuring that a fair share of the proceeds are taxed and/or allocated towards fulfilling human rights could be an indication of a failure to mobilize adequate resources. Moreover,

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[94] OECD Forum on Tax Administration, *Building Transparent Tax Compliance by Banks*, 13 July 2009.

[95] As mentioned in several responses to the questionnaire distributed by the Special Rapporteur. See Department of Economic and Social Affairs, The potential of financial transaction taxes for development financing, Policy Brief No. 38, July 2012.

[96] See "A global financial transaction tax, a human rights imperative now more than ever", 14 May 2012; and Righting Finance Initiative, *Financial Transaction Tax: A Human Rights Imperative*, No. 3, 2012.

[97] Africa Progress Panel, *Africa Progress Report 2013: Equity in Extractives*, p. 63.

[98] See ibid. and A/HRC/18/35.

[99] Africa Progress Panel, *Africa Progress Report* (see footnote 97), p. 60.

[100] See UNECA and African Union, *Minerals and Africa's Development*, 2011, p. 92; and ibid., p. 63.

[101] See Africa Progress Panel, *Africa Progress Report* (see footnote 97), p. 64.

excessive reliance on revenues from finite natural resources raises concerns not only about long-term sustainability but also governance and accountability.[102]

73. The political processes and policy choices that guide the capture and distribution of revenues from natural resource exploitation often determine whether they can be allocated for the progressive realization of economic, social and cultural rights, poverty reduction and social development. Good macroeconomic management of natural resources, such as stabilization funds, exchange rate and monetary policies, and financial and industrial policies that foster diversification are critical to enabling inclusive and sustainable development from natural resource exploitation.[103] Decisions about natural resource extraction must therefore be made with care, taking into account environmental concerns and the rights of future generations while respecting the rights of the entire population.

F. Enhancing international assistance and cooperation

74. In order to take effective and decisive action in these matters, concerted international cooperation is necessary. Without absolving any State of its obligation to raise the maximum available resources domestically to ensure the progressive realization of economic, social and cultural rights, there are limits to national-level actions in the absence of global reforms. Many States are undoubtedly hamstrung in their efforts to enact progressive taxation and combat illicit financial flows that could fight inequality and enhance the realization of economic, social and cultural rights.

75. Globalization and increased cross-border flows of goods and capital have vastly increased the chances that one State's actions or omissions may affect another State's ability to raise public revenues, and increased the ways and means that companies and individuals can use to evade and avoid taxes.[104] Illicit financial flows inevitably involve at least two countries. The tax laws and structures of one State can therefore erode the national tax bases of other States and hamper the application of progressive tax rates and the achievement of redistributive goals, ultimately threatening the realization of rights. There is a therefore a particularly urgent need for States to cooperate proactively on matters of tax and fiscal policy. In particular, high-income States that enable or fail to tackle tax abuse and illicit financial flows should shoulder some responsibility for the shortcomings of the tax and public finance systems in developing countries and related poverty rates, lack of enjoyment of human rights and economic inequalities.

76. While the rules of some international treaties address the handling of cross-border financial flows, they are manifestly inadequate to deal with the nature of modern globalized business. Owing to gaps in the interaction of different tax systems and, in some cases, because of the application of bilateral tax treaties, income from cross-border activities may go untaxed anywhere or be simply undertaxed.[105] Transnational corporations are able to shift profits across borders – including to tax havens where they have little or no real commercial presence – in order to take advantage of tax rates that are lower than in the country where the profit is made. This practice, which deprives both developed and

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[102] See for example Moore, "How Does Taxation Affect the Quality of Governance?" (see footnote 63), p. 14, and Deborah Brautigam, Odd-Helge. Fjeldstad and Mick Moore (eds.), *Taxation and State-Building in Developing Countries: Capacity and Consent,* February 2008.

[103] Katja Hujo, *Mineral Rents and the Financing of Social Policy: Opportunities and Challenges* (United Kingdom, Palgrave, May 2012).

[104] OECD, *Harmful Tax Competition: An Emerging Global Issue*, 1998, pp. 13-14; Africa Progress Panel, *Africa Progress Report* (see footnote 97), p. 65.

[105] OECD, *Action Plan on Base Erosion and Profit Shifting*, 2013, p. 10.

developing countries of billions of dollars worth of potential tax revenue, is known as tax "base erosion and profit shifting".[106]

77. The annual loss to Africa from transfer mispricing has been estimated at $38 billion, higher than the flow of development assistance to the region over the same period.[107] The problem is exacerbated by a lack of accessible information on "beneficial ownership" (the ultimate owner of companies, trusts and funds) and the fact that companies are not required to report systematically their income and activities on a country-by-country basis.

78. A new multilateral tax regime based on the premise of tax cooperation over competition is therefore urgently required. Existing mechanisms, such as the Committee of Experts on International Cooperation on Tax Matters, could play an important role with more dedicated support. Now is the time to take decisive action towards cooperation, guided by human rights principles.

V. Recommendations

79. **States must realize the full potential of tax collection as a tool to generate revenue for the fulfilment of human rights obligations and to redress discrimination and inequality. Human rights principles regarding participation, transparency, accountability and non-discrimination should be followed throughout the whole revenue-raising cycle. For this purpose, States should:**

(a) Seek to increase tax revenue in a manner compatible with their human rights obligations of non-discrimination and equality, and increase the allocation of revenues collected to budget areas that contribute to the enjoyment of human rights;

(b) Invest financial resources and political will in strengthening national tax authorities, ensuring that they have technical and budgetary autonomy and that their staff is professionalized;

(c) Increase reliance on personal and direct taxes, and design all taxes in ways that reduce regressive impact and gender bias;

(d) Carefully consider the income tax threshold to ensure that persons below or near the poverty line are not driven deeper into poverty by tax policies;

(e) Conduct human rights assessments of fiscal policy periodically and with broad public participation, including analysis of the distributional consequences and tax burden borne by different income sectors and disadvantaged groups;

(f) Review tax structures, codes and instruments for explicit and implicit gender bias and ensure they do not reinforce existing gender inequalities, including through their impact on unpaid care work;

(g) Ensure that people have access to all relevant data and information on fiscal policy and government revenues, including from the corporate sector, and include such information under right to information laws;

(h) Take measures to build the capacity of all people to understand fiscal policy options, and establish inclusive mechanisms to ensure that they are actively engaged in devising the most appropriate policy options;

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[106] Christian Aid, *False Profits: robbing the poor to keep the rich tax-free*, 2009.

[107] Africa Progress Panel, *Africa Progress Report* (see footnote 97), p. 65.

(i) Take strict measures to tackle tax abuse, in particular by corporations and high net-worth individuals;

(j) Institute fully transparent public oversight over the granting and monitoring of tax incentives, and conduct periodic assessments of social benefits and human rights compliance, informed by broad public participation, especially by individuals who will be most affected; and refrain from granting fixed-term tax holidays and tax stability agreements that may undermine accountability for evolving impact on human rights;

(k) Ensure accessible channels for accountability and remedy for any negative human rights impact of fiscal policy, including by strengthening the capacity of the judicial system and national human rights institutions to address fiscal policy;

(l) Ensure that extractive industries are subject to appropriate tax rates and export duties, and that the human rights of affected communities and future generations are protected in the exploitation of natural resources;

(m) Proactively disclose information on contracts, concessions and licensing agreements in the extractive sector and related information, including expected tax revenues and export royalty rates;

(n) Ensure the public revenue raised from the financial sector is commensurate to the sector's profitability and the risks it generates; implement a financial transaction tax, and consider allocating the revenues specifically to expenditure that can contribute to the realization of human rights;

(o) Implement regulations that prevent the role played by the financial sector in aiding tax evasion and profit-shifting.

80. With regard to international cooperation and extraterritorial impact, each State should refrain from any conduct that impairs the ability of another State to raise revenue as required by their human rights commitments, and cooperate in creating an international environment that enables all States to fulfil their human rights obligations.

81. For the above-mentioned purpose, States should:

(a) Actively pursue international cooperation in tax matters, working towards a multilateral regime for tax transparency that tackles tax abuse;

(b) Enact clear legislation and regulations to ensure that companies domiciled in their territory respect human rights in their operations everywhere, including in tax planning practices;

(c) Provide, when in a position and requested to do so, funding and technical assistance to strengthen the capacity of tax authorities in less developed countries to collect taxes and to adhere to international agreements that benefit them;

(d) Develop a system for more systematic and regular exchange of information between tax authorities, laying the foundations for an eventual multilateral, global system of automatic tax information exchange;

(e) Promote and engage in forums for tax cooperation that guarantee participation by developing countries; in particular, commit more resources to the Committee of Experts on International Cooperation in Tax Matters, support its upgrade to intergovernmental status, and support the implementation of its Model Tax Convention and the Code of Conduct on Cooperation in Combating International Tax Evasion and Avoidance;

(f) Adopt country-by-country reporting standards for all transnational corporations; in the case of extractive industries, also enforce project-by-project disclosure standards, such as those embodied in the Dodd-Frank Wall Street Reform and Consumer Protection Act and comparable European Union legislation, and apply them to all extractive industry companies listed on their stock exchanges;

(g) Adopt a framework that commits it to full disclosure of beneficial ownership of registered companies through national public registries;

(h) Include a commitment to align fiscal policy with human rights obligations as part of the post-2015 sustainable development framework, including by raising sufficient public revenue in equitable ways, allocating and spending revenue to realize human rights for all, and strengthening public oversight, transparency, participation in and accountability over fiscal policy, tackling tax evasion and illicit financial flows.

82. **The Special Rapporteur recommends that international economic bodies and financial institutions, in particular IMF, the European Union, the World Bank, the European Central Bank and the European Bank for Reconstruction and Development:**

(a) Consider human rights obligations and impact when setting conditions and policies in the area of fiscal policy; in particular, promote progressive rather than regressive taxation and ensure that all States are granted space to conduct counter-cyclical fiscal policies;

(b) Utilize their significant technical capacity to help Governments to broaden their fiscal space and redistributive capacities in accordance with their human rights obligations;

(c) Ensure that, when elaborating policy rankings, loan conditions or technical advice, these are not in conflict with the human rights obligations of the host State.